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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-sixth session
Applications Nos. 61, 62, 63, 64, 65 and 66

ADMINISTRATIVE TRIBUNAL JUDGEMENTS No. 497: SILVEIRA AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 487: LIMA AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 496: MR. B. AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 490: LIU AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 484: OMOSOLA AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 500: PAPPAS AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS

Report of the Committee

Rapporteur: Mr. Anthony AUST (United Kingdom of Great Britain and Northern Ireland)

INTRODUCTION

1. At its thirty-sixth session, the Committee on Applications for Review of Administrative Tribunal Judgements, established under article 11 of the statute of the Administrative Tribunal, considered the following applications:

(a) Application of Ms. Silveira for review of Administrative Tribunal Judgement No. 497 - Silveira v. the Secretary-General of the United Nations;

(b) Application of Mr. Lima for review of Administrative Tribunal Judgement No. 487 - Lima v. the Secretary-General of the United Nations;

(c) Application of Mr. Boluda for review of Administrative Tribunal Judgement No. 496 - Mr. B. v. the Secretary-General of the United Nations;

(d) Application of Mr. Liu for review of Administrative Tribunal Judgement No. 490 - Liu v. the Secretary-General of the United Nations;

(e) Application of Mr. Omosola for review of Administrative Tribunal Judgement No. 484 - Omosola v. the Secretary-General of the United Nations;

(f) Application of Ms. Pappas for review of Administrative Tribunal Judgement No. 500 - Pappas v. the Secretary-General of the United Nations.

2. Meetings of the Committee were held on 11 and 12 February 1991.

I. COMPOSITION OF THE COMMITTEE AND ORGANIZATION OF THE SESSION

3. The Committee, under paragraph 4 of article 11 of the statute of the Administrative Tribual, is composed of the Member States, the representatives of which have served on the General Committee of the most recent regular session of the General Assembly (forty-fifth session), namely, at this time: Barbados, Brazil, Canada, Chile, China, Congo, Cyprus, Czechoslovakia, Egypt, Fiji, France, Ghana, Greece, Honduras, Indonesia, Lebanon, Malta, Mauritius, Mozambique, Nepal, Rwanda, Saint Lucia, Senegal, Uganda, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

4. At its first meeting, on 11 February 1991, the Committee elected the following officers:

Chairman: Mr. Václav Mikulka (Czechoslovakia)

Rapporteur: Mr. Anthony Aust (United Kingdom)

II. THE APPLICATIONS BEFORE THE COMMITTEE AND THEIR CONSIDERATION

5. On 20 December 1990, the Committee received, through its Secretary, an application from Ms. Silveira requesting a review of Judgement No. 497 rendered by the United Nations Administrative Tribunal on 8 November 1990 in the case Silveira against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.193) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/497).

6. Written comments of the respondent, submitted with respect to the application of Ms. Silveira in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.194.

7. The Committee considered the application of Ms. Silveira at its closed meeting held on 11 February 1991.

8. After members of the Committee had presented their views on the application of Ms. Silveira, they were invited to decide whether or not there was a substantial basis for the application in respect of the following three grounds set forth in article 11 of the Statute of the United Nations Administrative Tribunal and referred to in the application.

(1) Has the Tribunal failed to exercise jurisdiction vested in it?

(2) Has the Tribunal erred on a question of law relating to the provisions of the Charter of the United Nations?

(3) Has the Tribunal committed a fundamental error in procedure which has occasioned a failure of justice?

9. The response of the Committee to the question as to whether the application has a substantial basis on the ground that the Tribunal had failed to exercise jurisdiction vested in it was negative.

10. With regard to the second and third questions, at the request of a member of the Committee the decisions were taken by vote.

11. On the question of whether the application has a substantial basis on the ground that the Administrative Tribunal had erred on a question of law relating to the provisions of the Charter of the United Nations, the Committee decided by a vote of 23 to 1 with 3 abstentions that there was not a substantial basis for the application on that ground.

12. On the question of whether the application has a substantial basis on the ground that the Administrative Tribunal had committed a fundamental error in procedure which occasioned a failure of justice, the Committee also decided by a vote of 20 to 2 with 4 abstentions that there was not a substantial basis for the application on that ground.

13. In view of the Committee's negative response to the questions which had been put to it in the application of Ms. Silveira, the Committee decided that there was not a substantial basis for the application under article 11 of the statute of the Administrative Tribunal and that therefore the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 497 delivered by the United Nations Administrative Tribunal in the case of Ms. Silveira against the Secretary-General of the United Nations.

14. On 27 December 1990, the Committee received, through its Secretary, an application from Mr. Lima requesting a review of Judgement No. 487 rendered by the United Nations Administrative Tribunal on 24 October 1990 in the case Lima against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.195) to all members of the Committee, as well as to the parties to the

proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/487).

15. Written comments of the respondent, submitted with respect to the application of Mr. Lima in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.196.

16. The Committee considered the application of Mr. Lima at its closed meeting held on 11 February 1991.

17. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Lima under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 487 delivered by the United Nations Administrative Tribunal in the case of Lima against the Secretary-General of the United Nations.

18. On 27 December 1990, the Committee received, through its Secretary, an application from Mr. Boluda requesting a review of Judgement No. 496 rendered by the United Nations Administrative Tribunal on 8 November 1990 in the case Mr. B. against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.197) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/496).

19. Written comments of the respondent, submitted with respect to the application of Mr. Boluda in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.198.

20. The Committee considered the application of Mr. Boluda at its closed meeting held on 11 February 1991.

21. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Boluda under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 496 delivered by the United Nations Administrative Tribunal in the case of Mr. B. against the Secretary-General of the United Nations.

22. On 26 December 1990, the Committee received, through its Secretary, an application from Mr. Liu requesting a review of Judgement No. 490 rendered by the United Nations Administrative Tribunal on 26 October 1990 in the case of Liu against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the

application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.199) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/490).

23. Written comments of the respondent, submitted with respect to the application of Mr. Liu in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.200.

24. The Committee considered the application of Mr. Liu at its closed meeting held on 11 February 1991.

25. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Liu under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 490 delivered by the United Nations Administrative Tribunal in the case of Liu against the Secretary-General of the United Nations.

26. On 28 December 1990, the Committee received, through its Secretary, an application from Mr. Omosola requesting a review of Judgement No. 484 rendered by the United Nations Administrative Tribunal on 19 October 1990 in the case of Omosola against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.201) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/484).

27. Written comments of the respondent, submitted with respect to the application of Mr. Omosola in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.202.

28. The Committee considered the application of Mr. Omosola at its closed meeting held on 11 February 1991.

29. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Omosola under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 484 delivered by the United Nations Administrative Tribunal in the case of Omosola against the Secretary-General of the United Nations.

30. On 31 December 1990, the Committee received, through its Secretary, an

application from Ms. Pappas requesting a review of Judgement No. 500 rendered by the United Nations Administrative Tribunal on 9 November 1990 in the case of Pappas against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 21 January 1991, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.203) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/500).

31. Written comments of the respondent, submitted with respect to the application of Ms. Pappas in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.204.

32. The Committee considered the application of Ms. Pappas at its closed meeting held on 12 February 1991.

33. The Committee decided, without a vote, that there was not a substantial basis for the application of Ms. Pappas under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 500 delivered by the United Nations Administrative Tribunal in the case of Pappas against the Secretary-General of the United Nations.

34. In accordance with article VII, paragraph 4, of the rules of procedure of the Committee, the decisions of the Committee with regard to the applications of Ms. Silveira, Mr. Lima, Mr. Boluda, Mr. Liu, Mr. Omosola and Ms. Pappas were formally announced by the Chairman at the meeting of the Committee, held in public on 12 February 1991. At that meeting representatives of Senegal and Greece made statements for the record with reference to Ms. Pappas' case. The verbatim record of the public meeting of the Committee is contained in document A/AC.86/XXXVI/PV.3.

35. Under the agenda item "Other matters", the Committee discussed the possibility of holding a special meeting or meetings to consider how the current proceedings of the Committee could be improved. It was decided that such a meeting or meetings should be held at either at the end of April or the beginning of May 1991. The time and place of the meeting will be announced in due course in the United Nations Journal.